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STATE OF ILLINOIS

# ILLINOIS COMMERCE COMMISSION

**Office of General Counsel**

December 22, 1998

VIA AIRNET EXPRESS

Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

RE: The Illinois Commerce Commission Supplemental Initial Comments to the Federal-State Joint Board on Universal Service Second Recommended Decision, CC Docket No. 96-45, DA 98-2410

Dear Office of the Secretary:

Enclosed please find the Illinois Commerce Commission's Supplemental Initial Comments to the Federal-State Joint Board on Universal Service Second Recommended Decision, CC Docket No. 96-45, DA 98-2410. I have included an original and six copies. Additionally, I mailed a copy the International Transcription Service, and I also sent a floppy disk to the Common Carrier Bureau.

I would appreciate acknowledging receipt of the filing by returning a duplicate time stamped copy of this letter in the enclosed self addressed, stamped envelope.

Thank you for your attention to this matter.

No. of Copies rec'd O+6
List A B C D E

Sincerely,

Myra L. Karegianes

Myra L. Karegianes
General Counsel

Enclosures

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**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

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| IN THE MATTER OF | * | CC DOCKET NO. 96-45 |
| | * | DA 98-2410 |
| FEDERAL-STATE JOINT BOARD | * | |
| ON UNIVERSAL SERVICE | * | |
| | * | |
| SECOND RECOMMENDED DECISION | * | |
| | * | |

## SUPPLEMENTAL INITIAL COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

On November 25, 1998, the Common Carrier Bureau ("CCB") of the Federal Communications Commission ("FCC" or "Commission") released a Public Notice (DA 98-2410) seeking comment on the Federal-State Joint Board on Universal Service ("Joint Board") Second Recommended Decision.[1] In response to this Public Notice, the Illinois Commerce Commission ("ICC") filed Joint Comments with the following states: Maryland, Connecticut, Delaware, and Massachusetts. In addition to its Joint Comments, the ICC files these supplemental initial comments to provide its recommendations regarding the following issues:

(1) The use of State cost study models for purposes of measuring non-rural LECs' cost of providing universal service;

(2) The explicit identification of universal service surcharges on customer bills; and

[1] Federal-State Joint Board on Universal Service, Second Recommended Decision, CC Docket 96-45, FCC 98J-7 (November 25, 1998). ("Second Recommended Decision").

(3) The funding base for federal high cost support.

## (1) THE USE OF STATE COST STUDY MODELS FOR PURPOSES OF MEASURING NON-RURAL LECS' COST OF PROVIDING UNIVERSAL SERVICE

In its Recommended Decision, the Joint Board recommends that the FCC reconsider its decision, which allows the use of state specific cost models, in lieu of a federal proxy model, for purposes of measuring a non-rural LEC's cost of providing universal service. The ICC disagrees with the Joint Board's recommendations for the following reasons.

First, based on its own experience in evaluating both company specific and proxy models within the context of its investigation into the forward looking cost of providing universal service (ICC Docket 97-0515), the ICC has concluded that state and company specific models consistently result in more accurate cost estimates than proxy models. State and company specific models are more accurate because the models rely on state specific conditions and exact customer locations to develop the costs of outside plant and central office functionalities used to provide universal service. Accurate cost studies ensure that a company is not overcompensated or undercompensated for the cost of providing universal service. They also ensure that end users are not unnecessarily burdened. As specified in the FCC's Universal Service Order, any federal universal service fund will be funded by telecommunications carriers. (47 U.S.C. § 54.703). In all likelihood, the telecommunications carriers will pass these costs on to their end users. As a result, any overestimation of universal service costs will result in a larger federal fund and higher costs to all end users that purchase telecommunication services. Accordingly, overestimation of universal service costs is inappropriate and does not serve the public interest of telecommunications consumers in general, and funding states in particular.

Second, the FCC has not yet determined the inputs that will be used in its proxy model. As a result, the ICC cannot evaluate the accuracy of the FCC model. Further, the ICC cannot recommend the sole reliance on a proxy model whose inputs are not even known.

Therefore, the ICC recommends that the FCC reject the Joint Board's recommendation to use a single, national model. Instead, in its determination of universal service support, the ICC recommends that the FCC allow the option of using state models submitted by the various State commissions, including Illinois' state specific model.

## (2) THE EXPLICIT IDENTIFICATION OF UNIVERSAL SERVICE SURCHARGES ON CUSTOMER BILLS

In its Recommended Decision, the Joint Board discusses recovery of universal service contributions from consumers. The Joint Board refers to the FCC's *Truth-in-Billing Notice* released on September 17, 1998.[2] In its Notice, the FCC sought comment on how to ensure that consumers receive complete, accurate, and understandable bills from their telecommunications carriers.

The Joint Board makes several recommendations regarding the instructions that the FCC should provide carriers regarding the manner in which these carriers are to depict on their bills the charges used to recover universal service contributions.[3] The Joint Board further recommends that the FCC take "decisive action to ensure that consumers are not misled as to the nature of charges on bills identified as recovering universal service contributions."[4] The ICC concurs with the Joint Board's recommendations, but would add that in order to fulfill these recommendations, universal service charges should be made explicit on customers' bills. For example, the end user's bill should include a section stating the following information: (1) the amount of federal universal service payment, (2) the amount of federal universal service funding received, and (3) the net federal universal service funding figure. By making these charges explicit, this would ensure consistency with the overriding concept that funding should be explicit to the end user. Explicit charges would not only aid in assuring that the customer understands the bill, it also helps to ensure that the carrier is not misrepresenting universal service charges. Additionally, the ICC recognizes that even with explicit funding on the customer's bill, a carrier may still misrepresent the charge as being either a "mandate" or "tax" for universal service. Therefore, the ICC also supports the recommendation that the FCC should monitor and/or approve language that carriers add on the customer's bill to further aid in not misleading the customer.

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[2] *Truth-in-Billing Format*, Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 98-232 (rel September 17, 1998) ("*Truth-in-Billing Notice*")
[3] Second Recommended Decision at para. 68.
[4] Second Recommended Decision at para. 70.

## (3) THE FUNDING BASE FOR HIGH COST SUPPORT

In its Recommended Decision, the Joint Board recommends that the FCC consider including intrastate revenues in the funding base for high-cost support. The ICC believes that including intrastate revenues exceeds the FCC's authority under Section 2(b)(1) of the 1996 Federal Telecommunications Act ("1996 Act"), which limits the FCC's jurisdiction with respect to intrastate telecommunications services.

Section 254 of the 1996 Act provides a role for both the federal government and state governments in universal service. The 1996 Act also provides for contribution to federal programs by every "carrier that provides interstate telecommunications services"[5] and for contribution to state universal service programs by every "carrier that provides intrastate telecommunications services."[6] Allowing the federal universal service program to be assessed on the intrastate revenue base available to fund state universal service programs would undercut the Congressional intent to provide for a state role in the provision of universal service.

Further, the Joint Board's recommendation would interfere with the goal of competitive neutrality. With the Joint Board's recommendation, a carrier that would be considered purely intrastate would not make any contribution to the federal universal service fund on the basis of its intrastate revenues, while a carrier determined to have sufficient interstate nexus would be required to contribute to the federal fund on its intrastate revenues. This is emphasized in Commissioner Furchtgott-Roth's dissent

[5] 47 U.S.C. Section 254 (d).
[6] 47 U.S.C. Section 254 (f).

when he correctly points out that dissenting State members from the First Joint Board had serious concerns with assessing universal service fees on intrastate revenues. In the State members' dissent, they state that "a carrier with intrastate revenues of a billion dollars a year would be subject to no federal USF assessment at all, while a carrier with $999,999,999.00 of intrastate revenue and one dollar of interstate revenue would be subject to assessment for the whole billion dollars of its revenue."[7]

Moreover, it is likely that use of intrastate revenues to fund a federal universal service fund will negatively impact state programs because it will reduce the funding based for those programs.

Finally, the FCC discussed the scope of its authority in its First Universal Service Order, stating:

> ... Though Section 254 grants the Commission the authority to assess contributions to rural, insular, and high cost areas and low income consumers from intrastate as well as interstate revenues and to require carriers to seek authority from states to recover a portion of the contribution in intrastate rates, we decline to exercise the full extent of our authority... .[8]

The FCC specifically stated that this decision was "intended to promote comity between the federal and state governments and is based on [the FCC's] respect for the states' historical expertise is providing universal service."[9] The FCC determined that it should maintain the traditional method of providing for recovery, which permits carriers to recover their federal universal service contributions through rate for interstate services

[7] Dissenting Statement of Commissioners Kenneth McClure , Missouri Public Service Commission and Laska Schoenfelder, South Dakota Public Utilities Commission, April 21, 1997.
[8] Universal Service Order, at para. 807.
[9] Id.

only. The FCC found that this approach would best promote the continued affordability of basic residential service.[10]

Nothing has occurred in the ensuing year and a half which should cause the FCC to reconsider its decision that contributions for the high cost fund should be received solely through rates for interstate services. Thus, the ICC strongly urges the FCC to not accept the Joint Board's recommendation to consider including intrastate revenues in the funding base for high-cost support.

[10] Id., at para. 809.

## CONCLUSION

For the reasons set forth herein, the ICC recommends that, in addition to the suggestions contained in the Joint State Commissions' comments, that the FCC take into consideration the above recommendations to (1) use state cost study models, when available, for purposes of measuring a non-rural LEC's cost of providing universal service; (2) require explicit identification of universal service surcharges on customer bills; and (3) limit the funding based on the federal high cost program to interstate revenues.

Respectfully submitted,

The Illinois Commerce Commission

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